



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

REPLY TO
ATTENTION OF
Regulatory Division

OCT 10 1997

Dear Interested Party:

The purpose of this letter is to inform you of the status of the Environmental Impact Statement in Southwest Florida.

Enclosed is the first revision to the draft Memorandum of Understanding. The original draft, dated July 17, 1997, was circulated by our earlier letter. This revision is based on comments received by the Corps and on discussions between the Corps and representatives of Lee County and Collier County.

The Lee County Board of County Commissioners will be reviewing this document and as part of their deliberations have scheduled a public hearing at 5:00 p.m., October 14, 1997, in the County Commission Chambers on the second floor of the old Lee County Courthouse building at 2120 Main Street, Fort Myers.

You will continue to receive letters on the progress of the Memorandum of Understanding document and on the preparation of the Environmental Impact Statement.

If you have any questions or comments, feel free to contact us either by mail or e-mail, at the address noted below.

Sincerely,

Bob Barron
Bob Barron
Project Manager

Enclosure

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Memorandum of Understanding
Environmental Impact Statement (EIS)
Southwest Florida

BACKGROUND.

WHEREAS, The National Environmental Policy Act (NEPA), Section 2, states as its purpose to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and to enrich the understanding of ecological systems and natural resources important to the Nation; and

WHEREAS, NEPA, Section 101, further declares it to be the policy of the Federal Government, in cooperation with state and local governments, and other concerned public and private organizations, to use all practicable means to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans; and

WHEREAS, the Corps of Engineers, under the provisions of the Clean Water Act, is charged with protecting the physical, chemical, and biological integrity of the nation's waters to include ensuring that impacts to the aquatic environment be avoided, if practicable, and, if not, be minimized and compensated (mitigated) for unavoidable impacts; and

WHEREAS, the Corps of Engineers, under the provisions of the Endangered Species Act, is charged with ensuring that any activity permitted does not jeopardize the continued existence of a Threatened or Endangered Species or adversely modify the designated critical habitat; and

WHEREAS, the Corps of Engineers, under the provisions of the National Environmental Policy Act (NEPA), is charged with ensuring that federal activities do not cause significant harm to the environment through a procedure that includes developing and analyzing various alternatives, considering secondary and cumulative impacts, and weighing the public interest through full public disclosure and participation; and

WHEREAS, the current process of obtaining approval for new uses of land can be onerous to applicants and difficult for governmental agencies due to overlapping regulatory authority in which new requirements are often inconsistent with previously approved plans and permits, which can lead to great frustration and unproductive expenses for the applicant, and less than optimum results for the environment; and

WHEREAS, the state has mandated and the applicable counties have, through the Local Government Comprehensive Planning Process, coordinated land use planning and conservation requirements with local and State agencies, which resulted in the adoption of Local Comprehensive Plans which are the approved and binding land use plans for each county, and as shall be recognized by the Corps and other regulatory agencies as required by 40 CFR 1506.2(d); and,

WHEREAS, the Corps of Engineers is experiencing difficulty in, on a case-by-case basis, addressing its responsibilities under Federal Law due to the increasing number, size, and complexity of individual permit requests within the area; and,

WHEREAS, the current regulatory scheme of reviewing projects on a case-by-case basis results in incremental changes not necessarily reflective of system-wide drainage and natural resource needs; and,

WHEREAS, currently studies are underway to evaluate what changes and improvements to the area's storm water management systems are appropriate to address recent flooding problems in the study area; and,

WHEREAS, the natural environment within the study area has been and continues to be negatively impacted by historical alterations to natural drainage patterns which occurred prior to current regulatory controls and by the spread of nuisance exotic species, particularly melaleuca and brazilian pepper, creating both the need and opportunity for restoration of these areas as compensation for unavoidable impacts; and

WHEREAS, the Corps has determined that the preparation of an Environmental Impact Statement (EIS) will result in a better foundation of information and knowledge of existing conditions and identification of future alternatives for balancing the demands of growth and conservation which should result in a more effective, timely, streamlined, cost-conscious, objective, productive, and predictable environmental permitting process for projects within the study area; and,

THEREFORE, to better serve the people of Southwest Florida by synchronizing the Corps permitting process with the adopted local comprehensive plan, while simultaneously fulfilling the Corps' responsibilities under NEPA, and assisting other regulatory agencies in their decision making process, by signature below, the Corps of Engineers will prepare, with the cooperation of the Boards of County Commissioners of Collier and Lee County (hereafter referred to as the Principals), an Environmental Impact Statement (EIS).

1.0 TENETS. The preparation of the EIS will be guided by the following tenets.

1.1 The EIS will commence on or about October 1, 1997 and be completed within 18 months.

1.2 The geographical area of the EIS is generally defined to be bounded by the Estero River Basin to the north, Estero Bay to the west, Imperial River Basin to the South, and CREW to the east, but the final limits will be defined collaboratively during the first two months via an open public scoping process.

1.3 The EIS shall be restricted to specific issues relevant to the regulatory authority of the Corps and generally will include protection of wetlands, mitigation, endangered species, cumulative and secondary impacts, water management, and water quality. The final nature and extent of issues will be defined via an open public scoping process.

1.4 The adopted Future Land Use Maps and related Elements of the Collier County and Lee County Comprehensive Plans and those of the Cities therein shall be used as the Counties' and State of Florida's preferred alternatives for purposes of the EIS.

1.5 Analysis will be holistic and regional -- individual projects or properties shall not be targeted for selective analysis or delay or implementation of EIS alternatives. Projects recognized as representative of area-wide generic issues or representing potential cumulative impacts may be included for illustrative purposes.

1.6 Many existing and ongoing studies and plans address water quality, stormwater management, wetland, and listed species impacts in the region. The EIS will utilize these studies to the maximum extent possible and will not duplicate or supersede any prior or ongoing local or regional studies, activities, or plans, including but not limited to Lee County's Environmental Lands Acquisition and Restoration Program and public or private mitigation banking projects. It is the intent to base the study insofar as possible on existing and available data and analysis; any deficiencies must be identified as early as possible to allow sufficient time to acquire necessary additional information without delaying the process. The EIS shall be based on sound scientific and technical data and analysis.

1.7 It may be desirable to develop a Geographic Information System database to be used as the common reference and mapping system for the EIS.

1.8 Approved jurisdictional delineations, listed species surveys, and other field verified information shall be accorded the greatest weight. The study must clearly acknowledge that any information which has not been field verified will not be used as the basis for any binding decisions until such verification has occurred.

1.9 Private property rights shall be clearly acknowledged and respected in EIS alternatives. It is recognized that neither the Corps permitting nor this EIS convey a property right nor authorize any injury to property or invasion of other rights.

1.10 The Counties will not be expected or required to adopt or otherwise implement any recommendation or finding of the EIS that would, in a County's judgment, expose the County to lawsuits or potential damage claims, including but not limited to, those under the Bert J. Harris, Jr., Private Property Rights Protection Act, or to inverse condemnation or takings claims under state or federal law.

1.11 The EIS itself does not mandate action. There will be subsequent steps after the study where the information in the study will be used in regulatory and other decisions.

1.12 Cooperating agencies shall have the meaning specified in 40 CFR 1508.5 and may include any Federal, State, or local agency which has jurisdiction by law or special expertise.

1.13 Participating Organizations (POs) shall include representation from State, regional, and local organizations including, but not limited to, business, economic development, real estate, service providers, civic associations, growth management interests, conservation and environmental organizations which can make a meaningful contribution to the preparation of the EIS and contribute to a balanced process. All organizations are invited to participate in the process defined by this MOU. Organizations that choose not to be a participating organization will still have full opportunity for comment on drafts as they are released and during public hearings and meetings through the process.

1.14 The EIS will be funded by the Regulatory Division of the Jacksonville District, Corps of Engineers, within the constraints of the availability of funds to the district for this purpose as determined by the District Engineer. CAs and POs may elect, at their sole discretion, to contribute within the constraints of availability of funds to them for this purpose, however contribution of funds is not a prerequisite for participation.

1.15 The Corps, Florida Department of Environmental Protection, South Florida Water Management District, and any other regulatory agency participating in the EIS shall continue to accept and process permit applications. If applications can be processed to completion, agencies shall not withhold or delay a decision to issue, modify, or deny a permit due to the EIS preparation. Until final adoption of the EIS and appropriate actions are taken to implement the provisions thereof, no Principal or Cooperating Agency shall impose conditions or requirements based on policy recommendations of the EIS, however this shall not be construed to preclude the use of factual information generated during the EIS as best available information.

1.16 A major goal of this cooperative and inclusive approach to EIS preparation is to ultimately streamline the environmental review and permitting process for all applicants; bring more speed, consistency, certainty and economy to the process. For example: criteria for development of a general permit; criteria for determining appropriate level of mitigation; definition for what the Florida panther and other threatened and endangered species require (area-wide species needs); identification of areas of particularly sensitive environmental value to be targeted for preservation or restoration.

1.17 EIS activities must be conducted in support of the public interest in achieving a balanced economy in concert with a healthy environment. Appropriate weight must be given to the economic impact of the conclusions reached on property owners, public costs, and public benefits and quality of life to develop meaningful, and economically viable solutions. Every consideration will be given to ensure that the EIS will not result in detrimental impacts to the economic development and diversification of the Southwest Florida economy.

1.18 The EIS will attempt to provide information which will allow decision makers to balance the public interest factors used in Corps permit reviews. These include conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

1.19 Florida Sunshine law obligations of non-federal participants shall be respected. The EIS shall be conducted in a manner that ensures full opportunity for public participation.

2.0 PRINCIPALS.

2.1 The Principals are the Corps of Engineers, Lee County BOCC, and Collier County BOCC

2.2 The Corps of Engineers will determine, with the input from the Boards of County Commissioners of Collier and Lee Counties and upon completion of the public comment process, the EIS scope and geographic boundary, and shall oversee the study process and final documents.

2.3 The Principals shall collaboratively determine the schedule and membership of groups formed to support the study

2.4 Each Principal shall have a right to withdraw from the preparation of the EIS in the event that they determine that it is no longer in its interest to participate.

3.0 COOPERATING AGENCIES AND PARTICIPATING ORGANIZATIONS. Cooperating Agency (CAs) and Participating Organization (POs) are those that have signed this MOU. Success will be enhanced if CA's and POs bring commitment to the process.

3.1 GENERAL. CAs and POs commit to the following.

3.1.1 Commensurate with the unique authorities and capabilities of each agency, allocating sufficient resources to ensure completion of the EIS within 18 months.

3.1.2 Ensuring appropriate representation and participation at each meeting convened by the Principals.

3.1.3 Making a sincere effort to develop a consensus alternative to an extent which is consistent with their governing laws and regulations.

3.2 SPECIFIC. Cooperating Agencies and Participating Organizations are invited to make specific commitments, to the extent consistent with their governing laws and regulations, to ensure the success of this effort. The commitment would be expressed in a letter addressed to the Corps. That letter would then be attached to this MOU

4.0 ADMINISTRATION. Must follow a logical, time bound plan to develop the EIS anchored by clear administrative procedures and responsibilities. A proposed conceptual plan designed to implement this memorandum is found at Appendix A. It is intended to be flexible and may be adjusted or modified as needed to provide the EIS in the agreed timeframe.

5.0 FINAL PRODUCT. The goals of the process will be as follows.

5.1 Completed EIS consistent with Federal and State laws and regulations which is also supported by the elected representatives and public they serve in Southwest Florida, the preparation of which established a consensus preferred alternative for Corps permit review under section 404 of the Clean Water Act within 18 months from the ratification of this agreement.

5.2 Conceptual basis for one or more General Permit for the study area region developed for administration by an appropriate agency, the goals of which shall include those set out in this MOU.

5.3 A public in Southwest Florida that possesses increased confidence in their government and a clearer understanding that costs and benefits of economic development and environmental stewardship can be accomplished simultaneously with minimal conflict.

5.4 Upon completion of the EIS, each County will review the recommendations and provisions thereof and determine in their sole legislative discretion whether an amendment to the Comprehensive Plan is appropriate. Any amendments to the County Comprehensive Plan will be adopted in accordance with F.S. Chapter 163. The recommendations, consensus alternatives and provisions of the EIS are non-binding on each County in regard to the acceptance and implementation of same by modifications to the County Comp Plan and County development regulations. All parties to this MOU agree that the Board of County Commissioners of the respective Counties retain full authority and power with respect to the acceptance of, adoption and implementation of any recommendations or provisions arising from the EIS. Each County reserves the right to accept, reject or modify any such recommendations or provisions of the EIS in the County Comprehensive Planning process.

PRINCIPALS. Signature and date.

Chair, Collier County Commission

Chair, Lee County Commission

District Engineer, USACE Jacksonville

COOPERATING AGENCIES. Federal, State, and Local agencies that have jurisdiction by law or special expertise for this study are asked to advise, by letter addressed to the Corps, whether they are interested in participating as a CA. These letters will be attached to this MOU at Appendix B as they are received

PARTICIPATING ORGANIZATIONS State, regional, and local organizations which are interested in participating in the study process (for example, through membership in the ADG) are asked to advise, by letter addressed to the Corps, whether they are interested in participating as a PO. These letters will be attached to this MOU at Appendix C as they are received.

Appendix A

Conceptual Implementation Plan

A.1.0 Months 1 and 2.

A.1.1 Corps will publish this agreement and solicit written comments from public on the issues and geographic scope of the EIS.

A.1.2 SWIG will conduct own workshops to prepare their recommendation. The Corps determines the scope of the study.

A.1.3 The Principals, in consultation with CAs and POs, determines the tasks and establishes an "Alternative Development Group (ADG)."

A.1.4 The ABM will prepare, at the end of Month 2, a report describing known existing data and potential data gaps.

A.1.5 Membership of the ADG and TG will be members of the public who reside in Collier and Lee Counties. Representatives of governmental agencies and other organizations may be ex-officio advisors to these two groups.

A.2.0 Months 3, 4, and 5.

A.2.1 The ADG will meet to identify factors used to evaluate recommendations and alternatives.

A.2.2 The ABM will coordinate with the ADG to identify what data is available to measure those factors, identify gaps, determine how they will be filled with consideration given to the budget and time frame of the study, and prepare a preliminary Technical Appendix.

A.2.3 The Corps will notice the availability of these and the SWIG will conduct a workshop to prepare their comments on the direction of the work.

A.3.0 Months 6, 7, and 8.

A.3.1 The ADG will:

A.3.1.1 identify a range of recommendations and alternatives to the preferred alternative;

A.3.1.2 prepare a "Progress Report" in Month 7;

A.3.1.3 then work towards and, if possible, identify a "consensus alternative";
and,

A.3.1.4 prepare, by Month 9, a report of its work.

A.3.2 The ABM will complete the draft Technical Appendix.

A.3.3 SWIG will hold public workshops in Months 7 and 9 to prepare their comments on the progress of these groups' activities.

A.4.0 Months 9, 10, and 11.

A.4.1 The SWFRPC edits/synthesizes the reports from the groups, background material, and NEPA-required technical material into a Draft EIS document.

A.4.2 The Corps, in consultation with the other Principals and with input from CAs and POs, reviews/proofs the Draft EIS.

A.4.3 The Corps solicits written comments from the public and holds two public hearings jointly with respective County Commissions for comments on the Draft EIS.

A.4.4 SWIG holds public workshop to prepare recommendation on "what is next".

A.5.0 Months 12, 13, and 14.

A.5.1 Principals discuss "what is next" and reconvenes the ADG to prepare a preliminary revision to its report.

A.5.2 ABM prepares a preliminary revision of the Technical Appendix.

A.5.3 SWIG holds public workshop to prepare their comments on the preliminary revisions.

A.6.0 Months 15, 16, and 17.

A.6.1 ADG and ABM complete revisions.

A.6.2 SWFRPC edits/synthesizes the Final EIS document.

A.6.3 The Corps, in consultation with the other Principals and with input from CAs and POs, reviews/proofs the Final EIS.

A.6.4 The Corps issues notice in federal register and solicits written comments from the public.

A.7.0 Month 18.

A.7.1 Corps prepares Record of Decision.

A.7.2 Counties initiate process for review of results.